

EXHIBIT 1

INTRODUCTION

Respondent Californians Against the Costly Recall of the Governor: Coalition of Firefighters, Workers, Educators, Bus, Bus Leaders, CA Dem Party, Entertainment Bus, Dem Governors, Governor Gray Davis Committee, (“Committee”), was formed on July 28, 2003, as a primarily formed committee opposing the recall of then Governor Joseph Graham Davis, Jr. in the October 7, 2003, Statewide Special Election. Respondent Committee was controlled by former Governor Joseph Graham Davis, Jr. (“Davis”) Respondent J. Ari Swiller (“Swiller”) was Respondent Committee’s treasurer, and Respondent Stephen J. Kaufman (“Kaufman”) was designated as Respondent Committee’s assistant treasurer.

Under the authority of the Political Reform Act (the “Act”),¹ the Franchise Tax Board (“FTB”) audited Respondent Committee’s activities during the period January 1, 2003 through December 31, 2003. The unaudited campaign statements reflect that, during the audit period Respondent Committee received contributions totaling approximately \$14,551,774 and made expenditures totaling approximately \$14,583,840.

For the purposes of this stipulation, Respondents’ violations of the Act are stated as follows:²

COUNT 1: Respondents Joseph Graham Davis, Jr., Californians Against the Costly Recall of the Governor et al., J. Ari Swiller, and Stephen J. Kaufman failed to properly disclose accrued expenses totaling approximately \$187,381.55 in campaign statements for the reporting periods from January 1, 2003 through September 20, 2003, in violation of Section 84211, subdivisions (i) and (k) and Regulation 18421.6.

COUNT 2: Respondents Joseph Graham Davis, Jr., Californians Against the Costly Recall of the Governor et al., J. Ari Swiller, and Stephen J. Kaufman failed to disclose a \$200,000 late contribution made to Taxpayers Against the Recall on October 2, 2003, in a properly filed late contribution report, in violation of Section 84203, subdivisions (a) and (b).

COUNT 3: Respondents Joseph Graham Davis, Jr., Californians Against the Costly Recall of the Governor et al., J. Ari Swiller, and Stephen J. Kaufman failed to maintain required records of notices to 33 contributors of \$5,000 or more, in violation of Sections 84104 and 84105 and Regulation and 18427.1, subdivision (c.).

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Respondents’ violations occurred in 2003. All statutory references and discussions of law pertain to the Act’s provisions as they existed in 2003.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that contributions and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act therefore establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Duty to File Campaign Statements

Section 82013, subdivision (a) defines a “committee” as any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly referred to as a “recipient” committee. A “primarily formed committee” includes a recipient committee which is formed or exists primarily to support or oppose a single candidate or a single measure. (Section 82047.5.) A “controlled committee” is a committee that is controlled directly or indirectly by a candidate. (Section 82016.)

A recipient committee has the obligation to file periodic campaign statements disclosing contributions received and expenditures made by the committee during the reporting period covered by the campaign statement. Section 84200, subdivision (a) requires recipient committees to file two semi-annual campaign statements each year. The first semi-annual campaign statement covers the reporting period January 1 to June 30, and must be filed by July 31 of the same year. The second semi-annual campaign statement covers the reporting period July 1 to December 31, and must be filed by January 31 of the following year. In addition, primarily formed ballot measure committees are generally required to file campaign statements quarterly. (Section 84202.3.)

Sections 84200.5 and 84200.8, subdivision (a) provide for the filing of two pre-election statements covering two reporting periods prior to elections not held in June or November of an even numbered year. The reporting period for the first pre-election campaign statement ends 45 days before the election, and the campaign statement is required to be filed no later than 40 days before the election. The reporting period for the second pre-election campaign statement ends 17 days before the election, and the campaign statement is required to be filed no later than 12 days before the election.

Duty to Disclose and Itemize Accrued Expenses in Campaign Statements

Section 84211, subdivision (b), requires a committee to disclose in each of its campaign statements the total amount of expenditures made during the period covered by the campaign statement and the total cumulative amount of expenditures made. In addition, for each person to whom the committee makes an expenditure of \$100 or more during the period covered by the campaign statement, a committee must disclose information that includes the payee’s name and address, the amount of each expenditure, and a brief description of the consideration for which each expenditure is made. (84211, subds. (i), (k).)

“Expenditure” includes any individual payment or accrued expense (i.e., an unpaid bill). (Sections 82025, 84211, subd. (k)(6).) Further, an expenditure is “made” on the date the payment is made or on the date consideration, if any, is received, whichever is earlier. (Section

82025.) If consideration is received before payment is made, then the expenditure must be reported on the campaign statement as an accrued expense as of the date on which the goods or services are received. (Regulation 18421.6, subd. (b).)

Duty to File Late Contribution Reports

Under Section 84203, subdivision (a), when a committee makes or receives a late contribution, the committee must disclose the contribution in a late contribution report filed at each office with which the committee is required to file its next campaign statement pursuant to Section 84215. The report is required to be filed within 24 hours of making or receiving the contribution. (Section 84203, subd. (b).) Section 82036 defines a “late contribution” as a contribution which totals in the aggregate \$1,000 or more that is made or received before an election, but after the closing date of the last campaign statement that is required to be filed before the election. Under Section 84200.8, for an election not held in June or November of an even-numbered year, the late contribution period covers the last 16 days before the election.

Duty to Maintain Records of Notice to Contributors of \$5,000 or More

When a committee receives cumulative contributions of \$5,000 or more from a contributor in a calendar year from a single source, Section 84105, as interpreted by Regulation 18427.1, requires the committee to provide notice to the contributor that the contributor may qualify as a “major donor committee” and therefore have filing obligations under the Act. The notice must be in writing, and sent within two weeks of receiving \$5,000 or more. A contributor qualifies as a major donor committee by making contributions totaling \$10,000 or more in a calendar year. (Section 82013, subd. (c).) Under Regulation 18427.1, subdivision (d), a committee has no obligation to send a major donor notification letter to a contributor if the committee has previously sent a major donor notification letter to the contributor in the same calendar year, or the contributor has been issued a recipient committee identification number by the Secretary of State.

Regulation 18427.1, subdivision (c) specifies that candidates and treasurers shall maintain a record of all notices sent to major donor contributors whose contributions totaled \$5,000 or more in a calendar year. The record must contain the date of each notice, and the name and address of each person to whom a notice was sent.

Treasurer Liability

As provided in Section 84100, every committee shall have a treasurer. A committee may also designate an assistant treasurer. (Regulation 18426.1.) Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, subdivision (a), it is the duty of a committee’s treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee’s treasurer and assistant treasurer may be held jointly and severally liable, along with the committee, for reporting violations committed by the committee. (Sections 83116.5 and 91006; Regulation 18426.1.)

SUMMARY OF THE FACTS

Respondent Committee was a candidate controlled primarily formed ballot measure committee formed in July 2003 to oppose efforts to recall Governor Davis. Respondent Committee was controlled by Respondent Davis. At all times relevant to this action, Respondent Swiller was Respondent Committee's treasurer and Respondent Kaufman served as assistant treasurer. According to Respondents, Respondent Kaufman's office performed the treasurer functions for Respondent Committee, while Respondent Swiller served as the named treasurer.

COUNT 1

Failure to Properly Disclose Accrued Expenses

Respondents Davis, Committee, Swiller, and Kaufman had a duty to disclose in each campaign statement the total amount of expenditures made during the reporting period covered by the campaign statement and the total cumulative amount of expenditures made. (Section 84211, subd. (b).) In addition, for each person to whom an expenditure of \$100 or more was made during the reporting period, Respondents were required to disclose information that included the payee's name and address, the amount of each expenditure, and a brief description of the consideration for which each expenditure was made. (Section 84211, subds. (i), (k).)

Generally, accrued expenses are unpaid bills. Respondents accrued expenses totaling \$389,585.69 during the audit period for services received from the law firm Remcho, Johansen & Purcell. Of this amount, \$360,354.67 accrued during the campaign reporting period from January 1, 2003 through August 23, 2003. Respondents disclosed zero accrued expenses in its campaign statement for the reporting period from January 1, 2003 through August 23, 2003. Respondents accrued an additional \$29,231.02 for services received from Remcho Johansen & Purcell during the campaign reporting period from August 24 through September 20, 2003. During this reporting period, Respondents reported total accrued expenses of \$339,050.18, including \$202, 204.14 for services received from Remcho Johansen & Purcell. Respondents failed to disclose accrued expenses totaling \$187,381.55 from Remcho Johansen & Purcell during these two reporting periods.

Respondents subsequently paid the accrued expenses and disclosed them as expenditures made in the semi-annual campaign statement for the reporting period from September 21, 2003 through December 31, 2003.

By failing to timely report accrued expenses totaling \$187,381.55, Respondents violated Section 84211, subdivisions (i) and (k).

COUNT 2

Failure to File Late Contribution Report

Pursuant to Section 84203, Respondents Davis, Committee, Swiller, and Kaufman had a duty to report making a late contribution within 24 hours of the time it was made. The late contribution reporting period for the October 7, 2003 Statewide Special Election was from September 21, 2003 through October 6, 2003.

According to Respondent Committee's bank records, on October 2, 2003, Respondents made a \$200,000 contribution via wire transfer to Taxpayers Against the Recall. Respondents were required to disclose making this late contribution in a properly filed late contribution report within 24 hours, or by October 3, 2003. Respondents filed a late contribution report with the Secretary of State ("SOS") disclosing the \$200,000 late contribution on October 23, 2006, after learning about it during the audit and at the request of the Enforcement Division. Taxpayers Against the Recall disclosed the receipt of the contribution in a late contribution report filed electronically with the SOS before the election on October 2, 2003.

By failing to disclose making a \$200,000 late contribution in a properly filed late contribution report, Respondents violated Section 84203, subdivisions (a) and (b).

COUNT 3

Failure to Maintain Required Records of Notice to Contributors of \$5,000 or More

Section 84105 and Regulation 18427.1 require that a candidate or committee that receives contributions of \$5,000 or more in a calendar year from any person to inform the contributor within two weeks of receipt of the contributions that he or she may be required to file campaign reports as a major donor committee. Respondents Davis, Committee, Swiller, and Kaufman had a duty under Regulation 18427.1, subdivision (c) to maintain a record of all notices sent to such contributors. The record must contain the date of each notice, and the name and address of each person to whom a notice was sent.

Respondents received 210 contributions cumulating \$5,000 or more from individual contributors during the audit period. Respondents maintained copies of 177 notification letters, which were properly sent within the two week statutory time frame. Respondents did not maintain copies, or a record of the date that 33 notification letters were sent to contributors of \$5,000 or more.

Respondents indicated that they had a procedure in place to track major donor letters by, among other things, checking a box on a contributor screen in their reporting database indicating when a major donor letter went out, and the boxes for all 33 of the contributors in question contain that check mark. Based on this, Respondents believe the 33 letters were sent out in a timely manner.

By failing to maintain required records of 33 major donor notices, Respondents violated Sections 84105, 84104 and Regulation 18427.1, subdivision (c).

CONCLUSION

This matter consists of three counts of violating the Act, which carry a maximum possible administrative penalty of Fifteen Thousand Dollars (\$15,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory

scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the Respondent, upon learning of the violations, voluntarily filed appropriate amendments to provide full disclosure.

PRIOR HISTORY

The FTB audited Californians for Gray Davis for the audit period of January 1, 1995 through December 31, 1998. This committee was also controlled by Joseph Graham Davis, Jr., who was a successful candidate for governor in the 1998 General Election. Steven Gourley served as the Committee's treasurer during the audit period. In October 2001, Californians for Gray Davis, Joseph Graham Davis, Jr., and Steven Gourley were prosecuted by the Commission and stipulated to 25 counts of violating the Act with a total maximum administrative penalty of \$50,000. (FPPC Case No. 2000/56) Charges in this case included one count for failure to maintain copies of major donor notification letters, in violation of Section 84104 and 84105, and 17 counts for failure to file, or timely file, late contribution reports, in violation of Section 84203.

While the controlling candidate in the instant matter is the same as above, Joseph Graham Davis, Jr., the committee and treasurer are different. Here, consideration should be given to the fact that Respondents Committee, Swiller, and Kaufman have no prior history of violating the Act. Moreover, there were no enforcement actions involving Respondent Davis or his controlled committee for the 2002 election cycle when he was re-elected as Governor.

ASSESSMENT

Regarding Count 1, the typical administrative penalty for failing to properly disclose accrued expenses has varied based on the circumstances of the violation, such as the total dollar amount not reported and whether the information should have been reported on a pre-election or post-election campaign statement. In this matter, Respondents failed to disclose accrued expenses of approximately \$187,382 incurred during two pre-election reporting periods. However, the total dollar amount not reported is relatively low, compared to the approximately \$5,906,607 in expenditures Respondents made during the same reporting periods. Respondents subsequently disclosed the expenses in the reporting period when they paid for the services that had accrued. The evidence obtained does not show that Respondents' violation was deliberate. Therefore, an administrative penalty of \$2,000 is appropriate.

Regarding Count 2, the typical administrative penalty for failing to report a late contribution has historically resulted in penalties ranging from the mid to high range of the available penalties, depending on the facts and circumstances of each case, including the presence of aggravating factors such as the amount of money not reported and whether the violations resulted from negligent or intentional conduct. In this matter, Respondents failed to report a \$200,000 contribution it made. An aggravating factor is that in 2001 Respondent Davis was prosecuted for failing to file or timely file late contribution reports. However, there was no

evidence obtained showing that the violation in this matter was intentional, and Respondents did timely file late contribution reports for approximately 315 other late contributions received totaling approximately \$6,184,837. In addition, Taxpayers Against the Recall timely reported receipt of the \$200,000 late contribution, so the information was available to the public before the election. In light of these factors an administrative penalty of \$2,500 is warranted.

Regarding Count 3, Respondents did not maintain records necessary to verify that 33 of 210 major donor notification letters Respondents were required to send actually were sent in a timely manner. Penalties imposed for record-keeping violations have been particularly fact dependant and thus have been in the low to high range. In aggravation, Respondent Davis was prosecuted for failing to keep copies of major donor verification letters in 2001. However, Respondents Committee, Swiller, and Kaufman have no prior history of violating the Act. Also, in mitigation, Respondent Committee had a set procedure it followed when it received a \$5,000 or greater contribution, where a box in its database was checked indicating that the letter was sent to the contributor. Evidence obtained shows that the box is marked for the 33 contributors in question, which indicates a letter went out. Additionally, copies of 177 letters were kept, which were sent within the statutory time frame. The evidence obtained does not show that Respondents' violation was intentional. In light of these factors an administrative penalty of \$450 is appropriate.

The facts of this case, including the aggravating and mitigating factors discussed above, therefore justify imposition of the agreed upon penalty of Four Thousand Nine Hundred Fifty Dollars (\$4,950).